

**EQC/LJIAC EMINENT DOMAIN SUBCOMMITTEE**  
**PUBLIC HEARING**  
March 23, 2000  
Final Minutes

**SUBCOMMITTEE MEMBERS PRESENT**

Sen. Mack Cole, Chair  
Rep. Kim Gillan  
Rep. Gail Gutsche  
Rep. Monica Lindeen  
Rep. Dan McGee  
Rep. Jim Shockley

Sen. Spook Stang  
Rep. Bill Tash  
Mr. Tom Ebzery  
Ms. Julia Page  
Mr. Jerry Sorensen

**SUBCOMMITTEE MEMBERS EXCUSED**

None

**STAFF MEMBERS PRESENT**

Krista Lee, EQC  
Gordy Higgins, LJAC  
Greg Petesch, LSD  
Judy Keintz, Secretary

**VISITORS' LIST**  
**Attachment #1**

**I      CALL TO ORDER AND ROLL CALL**

CHAIRMAN COLE called the meeting to order at 6:30 p.m. Roll call was noted; all members were present (**Attachment #2.**) The public was welcomed to the meeting and logistics of providing comment was given.

**II      PUBLIC COMMENT VIA METNET - MILES CITY**

**Mark Fix, Rancher**, remarked that the Tongue River Railroad is proposed to cross his land. Many people feel that if there is a public need, it is alright to take property for the greater good. In theory this sounds good, but if the project needs to cross your land it becomes a totally different prospect. When an entity wants to take your best ground or cut off parts of your ranch, one thinks about the tremendous power the corporations enjoy. The determination of public need should be proven to the State Land Board before a project can begin. We work hard to improve our ranches and we have seen the damages that occur due to a condemnation effort. The Tongue River Railroad wants to cross his ranch by going through the middle of his calving

pasture, cutting his cattle off from water, going through a dam, and crossing ground he may want to irrigate some day. They want to built on the Tongue River Flood Plane. He has offered an alternative route that would alleviate some of these problems, but the Railroad is unwilling to consider his requests. He has reached the end of his negotiation process with Tongue River Railroad. He will not sign an agreement that will allow them to ruin his ranch. The only means he has to protect his ranch will be through the courts.

Condemnation laws currently only discuss what damages will be paid for the route chosen by the condemnor. The route he provided was straighter than their existing route and eliminated crossing his neighbor's land and going through their dam. Part of the eminent domain law should include a consideration of the location of the route. This should be settled before any other part of the condemnation process can occur. Using the Tongue River Railroad as an example, they can only obtain an easement across state and federal lands. As a landowner, he only wants to grant an easement as well. Tongue River Railroad wants fee title to a right-of-way across all private land and the existing law allows them to obtain it. As the Railroad's legal representative stated at the February EQC Meeting in Helena, owning the land would help them obtain financing. The law should be changed to make it more difficult to obtain fee title to private property.

There should also be a provision in the law to review the work done on a right-of-way for one year after it is completed. There could be erosion in unexpected areas or the modification designed to help the landowner may not function as anticipated. This would allow corrections to be made without going through a court battle.

**Larry Morgan, Wibaux**, stated that gas pipelines are required by the federal government to inspect their lines by air and a physical ground inspection each year. Electrical lines are under the same requirement. This involves trespassing every year without compensation. This needs to be addressed.

**Jerry Sikorski, Willard**, stated that the true public use needs to be determined. The law should not presume that every pipeline, railroad, or power line serves a public purpose that justifies the taking of private property. When a developer wants to take private property, they should have to show clear and convincing evidence that they are taking the property for a true public use. Public use should be determined on a case-by-case basis using criteria established in law. If a project is not a legitimate public use, the developer should not be given the power to threaten condemnation when negotiating with landowners. Specifically, hard rock mines should not receive special treatment under the law. Current Montana law does not grant the power of eminent domain for any other kind of mine.

**Wally Day, Former Legislator - Glendive**, stated that in the 1970s bills were introduced to amend the eminent domain laws. The bills were unsuccessful. Those who seek to condemn someone else's land should be required to prove that the project is a truly public purpose. Those who condemn someone's land should be required to minimize damage to private property and also should be required to meet certain standards. Landowners should have the option of leasing rather than deeding land. Those who condemn someone's land should pay stiff legal damages for harming private property. An entity should not be allowed to take possession of the property until court proceedings are concluded. Using the power of eminent domain should not be allowed for monetary purposes only.

There was no one present for public comment at the Glasgow MetNet location.

### **III      PUBLIC COMMENT - BILLINGS**

**Dena Hoff, Northern Plains Resource Council (NPRC)**, presented her written testimony, **Exhibit 1**.

**Kae McCloy, Pompeys Pillar**, remarked that Cenex Pipeline provided a blanket easement over their entire ranch. A survey was to be completed and a plat was to be added. This was an undisputed public need. The pipeline needed to be moved away from the Yellowstone River. Their concern was that it should not be routed through the water needed to operate their ranch. When the survey was completed, the route was 1/8 of a mile from Lost Boy Creek, which runs the length of the ranch and provides water for the town of Pompeys Pillar. They wanted the route to be placed two miles from the survey placement. In court, the judge granted the easement and also allowed fiber optics to be placed in the easement. If the fiber optics needed to be repaired, they would be dealing with an entity that did not have an easement with the landowner. The fiber optics entity told them that they usually follow the railroad but do offer a \$40,000 a mile lump sum payment or \$5,000 a mile per year. They were not offered any compensation nor did the judge grant any compensation. The judge also granted the right to use ranch roads or to make new roads, if needed. When there is a spill, the pipeline will not be able to get to the easement on the ranch roads. There should have been more consideration to the routing.

The law states that the entity condemning should use a licensed surveyor. Cenex Pipeline used an unlicensed survey. The BLM requires a monitoring fee and a yearly rental fee. It should be unconstitutional for the State of Montana to grant private industry condemnation rights and not afford the landowner the same protection that the state demands. The playing field needs to be more fair.

**Wally McRae, Rancher - Forsyth**, presented his written testimony, **Exhibit 2**. He also provided a letter to be submitted to Subcommittee members, **Exhibit 3**.

**Kay O'Donnell, Landowner**, stated that in 1951, Cenex took a large portion of their land. At that time, the laws didn't provide for reclamation. The areas the pipeline used are very washed out with pipe showing over the top of canyons. In the early 1960s, the interstate highway was built. This is the third time the eminent domain issue has come up. They did not fight the process this time. They have gone through a lot with the entities condemning for eminent domain purposes. Changes need to be made to the eminent domain laws.

**Jeanne Charter, Rancher**, presented her written testimony, **Exhibit 4**.

**Nellie Israel, NPRC**, presented her written testimony, **Exhibit 5**.

**Jackie Crandall, Rancher**, remarked that two of her neighbors would have lost property due to the building of an airport. The issue is public need versus public want. An airport is being proposed in Carbon County, outside of Red Lodge. There are four airports within 60 miles of Red Lodge. Many of the sites considered for the new airport would condemn ranch land that has been in families for generations. Real public need should be proven before someone's land can be taken against their will. The burden of proof should be on the developer and not on the property owner.

**Clint McRae, Rancher - Forsyth**, presented his written testimony, **Exhibit 6**.

**Art Hayes, Jr., Rancher - Birney**, stated that it was important to have a mechanism for review. When does a project lose its viability? Some people on the lower Tongue River have been held hostage with a cloud on their title for over 20 years. The law needs to contain a mechanism for reviewing eminent domain projects.

**Sid Menical, Miles City**, remarked that recently the voters of Montana voted on an issue condemning cyanide use in gold mining. An entity is now threatening to sue the state for millions of dollars because they lost a property right. The taxpayers and citizens of the Tongue River Valley are also going to lose their property rights. The issue is one of fairness. What's fair for a gold mining company ought to be fair for the ranchers and farmers of the Tongue River Valley.

**Al Schmitz, Brockton**, stated that he has heard from his neighbors in the northern counties that when the pipeline project went through, it was necessary for the landowners to organize to

protect their rights. The law should be more fair so that people do not have to organize to keep their rights intact.

**Ryan Miles, Billings**, stated that he earns a living by building pipelines. He has seen an abuse of the eminent domain process in that there was no accountability as far as proper construction techniques implemented on a pipeline job. Only after the mistakes were caught, did the pipeline make the proper changes. The entities that use the power of eminent domain should be held accountable and do their work in a proper manner. Given today's technologies, there is no excuse for the lack of quality involved in building pipelines.

**Gary Hedges, Park City**, remarked that they have had a pipeline go through their property. He is also a board member of an agency of county government. It is necessary to have some provision for condemnation.

**Sen. Bill Glaser, SD 8**, stated that a lot of the people testifying today are people who built this country and they have no rights under the existing law on the issue of eminent domain. Several bills were introduced during the last legislative session attempting to address the problems with the eminent domain laws. The privileges that private business have on private land must be changed. As the law is now written, his neighbors are being raped.

**Dan Teigan, Teigan**, remarked that there are those who believe that a long history of family ranching somehow bolsters credibility. However, what is most important is how long a family can continue ranching. Currently there are too many ways to lose a family ranch. Condemnation, by way of eminent domain, should not be one of those ways. They would have been better off if they had more input before the highway was replaced through the middle of their hay meadows, the most vital part of any ranch. With more landowner input and legal standing, they could have avoided having the highway and railroad go right between two barns and corrals in their front yard. Additionally, if the railroad had been given a lease, rather than title ownership to their ranch, they would not have had to buy back their land when the railroad left. Only under the strictest guidelines should title ownership be taken from private landowners.

The process of having their farms and ranches taken by eminent domain is challenging enough. It is not unreasonable to expect an entity, such as a railroad, to have all their ducks in a row before they take a bulldozer to the land. A family should be given enough respect whereby all relevant legal, financial, and practical considerations are clear and resolved before a ranch is impacted.

**Drury G. Phebus, Retired Postmaster and Rancher - Baker**, presented his written testimony, **Exhibit 7**.

**Rep. Lila Taylor, HD 5**, stated that she introduced one of the eminent domain bills in the last legislative session. If nothing else, a procedure was started that has been long overdue in this state. She thanked REP. MCGEE for the liability issue proposal. This is one step in the process. As people start to understand the problem, the two opposing sides can come together on this issue. She is not anti-development but is pro private property rights. It is very necessary that the two sides come together on the issue at hand. She is a landowner who is affected by the Tongue River Railroad. If the railroad only needs an easement, the landowner ought to have the right to negotiate on that basis. When the Tongue River Dam was completed, the state wanted to take land around the reservoir for high water purposes. They had land around the reservoir and did not want the state to have ownership because they did not want cabins to be built on the site. They negotiated with the state for an easement. The land is still in their ownership and the state received what they wanted. This can happen without having to use condemnation and eminent domain proceedings. The reason an easement is important to a landowner is very obvious when one travels to Roundup and Harlowton. When the railroad left, some of the ranchers had a chance to buy back their property but others did not. There are weeds, broken down fences, trailer houses in front of ranches, etc. The landowner who was condemned to give up his land, does not have a right to have the land back. This is as wrong as it can be in Montana.

She is very interested in the burden of proof of “clear and convincing” evidence as opposed to the “preponderance” of evidence. The bills introduced in the last legislative session can be used as examples. She commended the Subcommittee for all their work and noted that they have a lot of work ahead of them.

Additional written comments: **Bob Stevens, Jr., Helena - Exhibit 8; Christine Valentine, Birney - Exhibit 9; William F. Gillin, Forsyth - Exhibit 10.**

Additional handout: Summary of Violations Cited by DEQ & Landowners’ Concerns with the CENEX Pipeline Construction - **Exhibit 11**; Obtaining a Right-of-Way on Public Lands - **Exhibit 12**; and Eminent Domain Reforms for Private Property Protection - **Exhibit 13**.

REP. GUTSCHE asked **Mr. Miles** for more information regarding the lack of accountability on the pipeline project. **Mr. Miles** stated that there are numerous governmental agencies who provide standards and specifications for pipelines. They found that the inspectors either did not have the necessary knowledge needed or were simply overlooking the standards to which the

company should have been adhering. There was approximately 130 miles constructed before he became involved in the project. There was probably less quality control prior to their work on the project.

#### **IV     ADJOURNMENT**

There being no further business, the meeting adjourned at 8:00 p.m.

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SEN. COLE, Chairman